

**SECTION-SECTION DESCRIPTION OF THE
SENATE *DRAFT* CHILD NUTRITION REAUTHORIZATION BILL**

Short Title

“Child Nutrition and WIC Reauthorization Act of 2004”

Title I. Amendments to the Richard B. Russell National School Lunch Act

Section 101. Nutrition Promotion

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section requires the Secretary to make payments to State agencies to promote nutrition in child nutrition food service programs.

For each fiscal year, the total amount made available may not be more than ½ cent x the number of lunches reimbursed (subsidized) through the school lunch program, the child and adult care food program, and the summer food service program. At current lunch service rates, this would total to approximately \$34 million.

Each State agency would be allocated either a uniform base amount set by the Secretary, or if higher, an amount based on its proportion of the total number of lunches reimbursed through the school lunch program, the child and adult care food program, and the summer food service program. However, the Secretary would be required to reduce proportional allocations to State agencies to the extent necessary to ensure that the total allocated is not greater than the amount appropriated for the nutrition promotion program.

Most funding received by State agencies would be disbursed to school food authorities and other child nutrition food service institutions to disseminate and use nutrition messages and materials developed by the Secretary. But State agencies would be allowed to (1) reserve up to 5% of their allocation (or, in the case of small State agencies, a higher percentage set by the Secretary) to support dissemination and use of nutrition messages and materials developed by the Secretary and (2) retain an additional portion of their allocation (set by the Secretary) and use the funds to disseminate and use nutrition messages and materials developed by the Secretary through the summer food service program.

Documentation of State agency activities would be required, and the Secretary would be permitted to reallocate unused funds.

Appropriations for the nutrition promotion program are authorized at “such sums as necessary” to carry out the program, to remain available until expended.

Section 102. Nutrition Requirements

Current law: Lunches served by schools participating in the school lunch program *must* offer:

- fluid milk; and
- a variety of fluid milk consistent with prior year preferences, unless the prior year preference for any particular variety of fluid milk is less than 1% of the total milk consumed at the school.

[Sec. 9(a)(2) of the Richard B. Russell National School Lunch Act (NSLA)]

Notes: By regulation, substitutes for fluid milk may be offered by schools. But they are only considered part of a reimbursable (subsidized) school meal if they are provided under the following rules. Schools *must* make substitutions in response to a request from a licensed physician for students with a “disability” that restricts their diet. Schools *may* make substitutions for students with “medical or other special dietary needs” when requested by a recognized medical authority. Under the terms of section 4(e) of the Child Nutrition Act of 1966, the milk and milk substitute rules of the school lunch program also apply to the school breakfast program. By policy, they also apply to other child nutrition food service programs.

Senate draft: This section replaces current law provisions and establishes rules that, in most matters, track current law and regulations. It stipulates that lunches served by schools participating in the school lunch program:

- *must* offer fluid milk in a variety of fat contents;
- *may* offer flavored and unflavored fluid milk and lactose-free fluid milk; and
- *must* provide a fluid milk substitute for students whose “disability” restricts their diet on the receipt of a written statement from a licensed physician that identifies the “disability” and specifies the substitute.

In addition, schools *may* substitute a non-dairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary for students who cannot consume fluid milk because of a “medical or other special dietary need” (other than a “disability”). The standards (among other requirements set by the Secretary) must include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow’s milk.

The permissive substitutions noted immediately above may be made if (1) the school notifies the State agency that the school is implementing a permitted variation and (2) the substitution is requested by written statement of a medical authority *or the student’s parent or legal guardian* that identifies the “medical or other special dietary need” that restricts the student’s diet. A school may not be required to provide non-dairy beverages other than those the school has identified as acceptable substitutes. Expenses incurred in providing substitutions for fluid milk that are in excess of expenses covered by program reimbursements must be paid by the school district.

Finally, this section bars schools and institutions participating in the school lunch program from restricting, directly or indirectly, the sale or marketing of “fluid milk products” by the school (or a person approved by the school) at any time or place on school premises or at any school-sponsored event.

Section 103. Provision of Information.

Current law: No provisions.

Senate draft: This section requires the Secretary to ensure that States and school food authorities administer school nutrition programs in a manner that reflects food consumption recommendations (1) specified in the Dietary Guidelines for Americans and (2) at the Secretary’s option, based on other recent scientifically valid information.

Section 104. Direct Certification.

Applications and descriptive materials

Current law: Applications for free and reduced-price school meals and descriptive materials about school meal programs must be distributed to parents and guardians.

[Sec. 9(b) of the NSLA]

Senate draft: The section requires that descriptive materials distributed to parents and guardians contain a notification that (1) participants in the special supplemental food program for women, infants, and children (the WIC program), the food stamp program, the food distribution program on Indian reservations, and State TANF programs may be eligible for free or reduced-price school meals and (2) documentation may be requested for verification of eligibility for free or reduced-price meals.

“Direct certification”

Current law: A school food authority *may* “directly certify” any child as eligible for free or reduced-price school meals, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the child’s status as a member of a food stamp household or a family receiving TANF.

[Sec. 9(b)(2)(C)(ii) of the NSLA]

Senate draft: This section *requires* school food authorities to “directly certify” as eligible for free school meals, without further application, any child who is a member of a *food stamp household*. In order to carry out this rule, it also *requires* each State agency to enter into an agreement with the State food stamp agency to establish procedures under which children who are members of food stamp households will be “directly certified” and amends the Food Stamp Act to require State food stamp agencies to enter into the required agreements and cooperate in carrying out “direct certification.”

The “direct certification” requirements are phased in. For school year 2006-2007, they apply to school districts with an enrollment of 25,000 students or more in the preceding year. For school year 2007-2008, they apply to school districts with an enrollment of 10,000 students or more in the preceding year. For subsequent school years, they apply nationwide. Until mandatory “direct certification” for children in food stamp households is fully implemented, the existing permissive authority is retained.

In addition, this section adds (to existing authority with regard to children in TANF families) *permissive* authority for school food authorities to “directly certify” homeless children, children served by programs under Title III of the Runaway and Homeless Youth Act, and migrant children.

Funding

Current law: No provisions.

Senate draft: This section also provides the Secretary mandatory funding (\$6 million to be available October 1, 2005 and remain available until spent) to assist States in carrying out the provisions of this section (as to applications and descriptive materials and “direct certification”) and verification activities (see section 105).

Communications

Current law: No provisions.

Senate draft: This section requires that any communications with households for verification or eligibility determination purposes be in an understandable and uniform format and, to the extent practicable, in a language that parents and guardians can understand. It also explicitly permits applications and descriptive material to be made available electronically via the Internet.

Miscellaneous and conforming provisions

Current law: No provisions.

Senate draft: This section further (1) limits information that may be provided to third-party contractors used in verification “follow-up” activities (see section 105), (2) requires State food stamp agencies to cooperate in verification activities (see section 105), and (3) makes various conforming amendments to the NSLA.

Section 105. Household Applications

Eligibility determinations

Current law: Eligibility determinations for free or reduced-price school meals (other than cases where “direct certification” is used) are to be made on the basis of complete application executed by an adult member of the household.

[Sec. 9(b)(2)(C) of the NSLA]

Note: School food authorities may request separate applications for each child in a household. By policy, school food authorities may assist in completing an application.

Senate draft: This section requires that eligibility determinations for free or reduced-price school meals (other than cases where “direct certification” is used) are to be made on the basis of a complete application executed by an adult member of the household *or in accordance with guidance issued by the Secretary*. It also stipulates that the household application must identify the names of each child in the household for whom meal benefits are being requested and *bars State agencies and school food authorities from requesting separate applications for each child*. It further explicitly permits applications with *electronic signatures* if the application is submitted electronically and the application filing system meets confidentiality standards set by the Secretary.

Verification of a sample of applications

Current law: By regulation, local school food authorities (SFAs) must verify the eligibility of children in a sample of approved free and reduced-price school meal applications. The sample size selected must be either (1) the lesser of 3% of, or 3,000, approved applications selected at random or (2) the lesser of 1% of all applications selected from “error-prone” applications (or 1,000 “error-prone” applications, plus the lesser of ½ of 1% of, or 500, approved applications that provided a case number (in lieu of income information) showing participation in the food stamp program, a State TANF program, or the food distribution program on Indian reservations.

“Error-prone” applications are those that indicate monthly income within \$100 (or annual income within \$1,200) of the income eligibility limits for free or reduced-price school meals.

[Regulations under Sec. 9(b) of the NSLA]

Senate draft: Effective July 2005, this section requires in law that SFAs verify the eligibility of children in a sample of approved free and reduced-price school meal applications.

The basic sample size would be the lesser of 3% of all applications selected from “error-prone” applications or 3,000 error-prone applications. “Error-prone” applications would be those defined as such under current regulations or, alternately, under criteria established by the Secretary.

However, SFAs could choose 1 of 2 *alternate sample sizes* (effectively the options established in current regulations, noted above) if:

- their “nonresponse rate” for the preceding school year is less than 20%, or
- they are an SFA with more than 20,000 children approved by application as eligible for free or reduced-price school meals as of October 1, and their “nonresponse rate” for the preceding school year is at least 10% below the “nonresponse rate” for the second preceding school year.

A “nonresponse rate” is the percentage of approved household applications for which verification information has not been obtained by an SFA.

Note: Second-preceding-school-year “nonresponse rates” may not be available for all schools for the 2005-2006 school year. As a result, this section also provides that, for the 2005-2006 school year, large SFAs (20,000+ approved students) also could qualify to use one 1 of the 2 alternate sample sizes if they attempt to verify all approved household applications through the use of “direct verification” – i.e., use of public agency records from at least 2 programs (see later description of “direct verification”).

In cases in which there are not enough “error-prone” applications to comply with the options, SFAs would be required to randomly select additional applications to fulfill the percentage or number requirement.

Preliminary reviews of approved applications

Current law: No provisions.

Senate draft: Prior to conducting any other verification activity for approved applications, this section requires SFAs to ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial determination (unless otherwise determined by the Secretary).

If the initial determination is found to be incorrect, the SFA must (1) correct the household's eligibility status, (2) notify the household of the change, (3) if the review indicates the household is not eligible for either free or reduced-price school meals, notify the household of the reason and that the household may reapply with income documentation, and (4) if the review indicates that the household is eligible, proceed to verify the application.

“Direct verification”

Current law: No provisions.

Senate draft: When verifying eligibility for free or reduced-price school meals, this section permits SFAs to first use “direct verification” – i.e., obtain and use income and program participation information from public agencies administering certain programs, in accordance with criteria established by the Secretary.

The programs are: the food stamp program, the food distribution program on Indian reservations, State TANF programs, State Medicaid programs, or similar income-tested programs (or other sources of information) as determined by the Secretary.

This section also requires the Secretary to evaluate (1) the effectiveness of “direct verification” in decreasing the portion of the verification sample that must be verified by contacting the household, while ensuring that adequate verification information is obtained, and (2) the feasibility of “direct verification.” If the Secretary finds that “direct verification” significantly decreases the portion of the sample that must be verified, while ensuring that adequate information is obtained, and that it can be conducted by most State agencies and SFAs, the Secretary may require a State agency or SFA to implement “direct verification” through 1 or more of the programs noted above – unless the State agency or SFA demonstrates that it lacks the capacity to conduct “direct verification” or is unable to implement it.

This section further provides mandatory funding (\$2 million to be available October 1, 2005 and remain available until spent) for the evaluation of “direct verification.”

Individual household verification, “follow-up” activities

Current law: No provisions.

Senate draft: If an approved household application is not verified through “direct verification,” this section requires SFAs to provide the household a written notice that its application has been selected for verification and that it is required to submit information to confirm eligibility for free or reduced-price school meals.

If the household does not respond to a verification request for information, the SFA is required to make at least 1 additional attempt to obtain the necessary verification from the household.

This section also permits SFAs to contract with a third party to assist the SFA in carrying out “follow-up” activities to make additional attempts to obtain necessary verification – under standards established by the Secretary.

Verification deadline

Current law: By regulation, verification activities must be completed by December 15th of each school year.

Senate draft: This section requires SFAs to complete all verification activities (including “follow-up” activities) by November 15 of each school year. It also requires SFAs to make appropriate modifications to eligibility determinations based on verification activities.

Changing the verification sample

Current law: No provisions.

Senate draft: This section allows the Secretary to alter required verification sample sizes, sample selection criteria, and the November 15 verification activity deadline – in the case of a natural disaster, civil disorder, strike, or other local condition. On individual case review, it also allows SFAs to decline to verify up to 5% of the verification sample and replace the declined applications with other approved applications.

Section 106. Duration of Eligibility for Free or Reduced Price Meals

Current law: No provisions. ***Note:*** Current policies direct that, when a family’s income changes in such a way as to make them ineligible for free or reduced-price school meals, they are to report the change, and the local school food authority is to adjust their status.

Senate draft: This section effectively directs that eligibility for free or reduced-price school meals remain valid for 1 year for most students. Eligibility would remain in effect beginning with approval for the current school year and ending on a date during the subsequent school year determined by the Secretary. An exception is included for cases where verification activities indicate ineligibility.

Section 107. Runaway, Homeless, and Migrant Youth

Categorical (automatic) eligibility

Current law: By administrative guidance, homeless children generally are automatically eligible for free school meals. There are no explicit eligibility provisions for runaway youth or migrant children. Also by administrative guidance, school officials may, for purposes of granting eligibility for free school meals, accept documentation that children are homeless from the local educational liaison for the homeless or directors of homeless shelters where the children reside.

Senate draft: This section establishes in law the automatic eligibility of homeless children for free school meals. It also makes youth served by grant programs under Title III of the Runaway and Homeless Youth Act and migrant children automatically eligible for free school meals.

Also, for purposes of granting automatic eligibility to homeless children, runaway youth, and migrant children, this section requires documentation that they are homeless, served by a runaway youth program, or a migrant child.

Participation by runaway and youth programs

Current law: Emergency homeless shelters may participate in the child and adult care food program under terms that allow them to serve all meals free.

[Sec. 17(t) of the NSLA]

Senate draft: This section permits “entities” participating in the runaway and homeless youth grant program under Title III of the Runaway and Homeless Youth Act to participate in the child and adult care food program under the same terms as emergency homeless shelters.

Section 108. Exclusion of Military Housing Allowances

Current law: In cases where military families live in “privatized” housing, their housing allowances are *not* counted as income when determining eligibility for free or reduced-price school meals. This rule is effective through June 30, 2004.

[Sec. 9(b)(7) of the NSLA]

Senate draft: This section makes *permanent* the current rule disregarding housing allowances for “privatized” housing.

Section 109. Waiver of Requirement for Weighted Averages for Nutrient Analysis

Current law: School food authorities must use “weighted averages” for their nutrient analysis of their school meal programs. Under this method, the nutrient content of school meals is measured (“weighted”) according to food items chosen by students. Compliance with this requirement was waived until September 30, 2003.

[Sec. 9(f)(5) of the NSLA]

Senate draft: This section re-instates the waiver of the requirement to use “weighted averages” for nutrient analysis – through September 30, 2008.

Section 110. School Food Safety Programs

Current law: Schools participating in the school lunch and breakfast programs must, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections. Schools are not required to comply with this requirement if a food safety inspection of the school is required by a State or local governmental agency responsible for inspections.

[Sec. 9(h) of the NSLA]

Senate draft: This section adds a requirement that school food authorities implement a school food safety program for the preparation and service of meals that complies with a “hazard analysis and critical control point” system established by the Secretary (see section 126).

Section 111. Purchases of Locally Produced Foods

Current law: Subject to the availability of appropriations, the Secretary is required to encourage institutions participating in the school lunch and school breakfast programs to purchase, in addition to other food purchases, locally produced foods – to the maximum extent practicable and appropriate. The Secretary also is required to provide startup grants to not more than 200 institutions to defray the initial costs of equipment, materials, and storage facilities (and similar costs) incurred in carrying out this policy. Annual appropriations of \$400,000 are authorized through fiscal year 2007.

[Sec. 9(j) of the NSLA]

Senate draft: This section extends the authorization of appropriations through fiscal year 2008.

Section 112. Special Assistance

Current law: Under “Provision 2” and “Provision 3,” *schools* with high proportions of children eligible for free and reduced-price school meals may elect to serve all meals free (i.e., avoid annual individual eligibility determinations and separate meal counting procedures for free and reduced-price meals), if they pay the extra subsidy cost of doing so. The Federal government is held harmless through formulas for estimating what costs would have been without a totally free meal system.

[Sec. 11(a)(1) of the NSLA]

Senate draft: This section allows school *districts* to claim “Provision 2” or “Provision 3” status.

Section 113. Food and Nutrition Projects Integrated with Elementary School Curricula

Current law: Subject to the availability of appropriations, the Secretary is required to award grants to a private nonprofit organization or educational institution in each of 3 States to create, operate, and demonstrate food and nutrition projects that are fully integrated with elementary school curricula. The authorization of appropriations for these grants (\$100,000 - \$200,000 a year) expired at the end of fiscal year 2003.

[Sec. 12(m) of the NSLA]

Senate draft: This section deletes provisions for grants for food and nutrition projects integrated with elementary school curricula.

Section 114. Procurement Training

Current law: No provisions.

Senate draft: Subject to the availability of appropriations, this section requires the Secretary to provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for child nutrition meal service programs – including technical assistance and training to ensure compliance with “Buy American” requirements. Annual appropriations are authorized at \$1 million a year for each of fiscal years 2005 through 2008, to remain available until spent.

Section 115. Summer Food Service Program for Children

“Seamless summer waivers”

Current law: No provision. **Note:** By administrative policy, school food authorities may be granted “seamless summer waivers” under which they may administer summer food service programs under provisions of law that normally apply to school meal programs, including school meal reimbursement (subsidy) rates. These waivers may be obtained to operate programs during traditional summer vacation periods and, for year-round schools, long school vacation periods (generally exceeding 2-3 weeks).

Senate draft: Specifies in law provisions that closely track the current “seamless summer waiver” policy. School food authorities may administer summer or school vacation food service under the provisions of the school meal programs, including school meal reimbursement (subsidy) rates – except as otherwise determined by the Secretary.

Rural Area Eligibility Pilot Project for Summer Food Service

Current law: No provisions. **Note:** Under section 13(a)(1) of the NSLA, summer food service programs in “areas in which poor economic conditions exist” operate as “open-site” programs in which all participating children are served free meals. “Areas in which poor economic conditions exist” are defined as those in which more than 50% of the children are eligible for free or reduced-price school meals.

Senate draft: This section requires the Secretary to carry out a pilot project in rural areas of 1 State (selected by the Secretary) under which the threshold for “open-site” programs is 40% – for each of calendar years 2005 and 2006.

This section also requires the Secretary to conduct an evaluation of the rural area eligibility summer food service pilot project. A report is due not later than January 1, 2008, and mandatory funding (a total of \$400,000) is provided to carry out the evaluation, to be available until spent.

Appropriations authorization

Current law: Appropriations for the summer food service program are authorized through June 30, 2004.

[Sec. 13(q) of the NSLA]

Senate draft: This section extends the appropriations authorization for the summer food service program through September 30, 2008.

The “Lugar” pilot project

Current law: The “Lugar” pilot project allows public sponsors of summer food service programs (e.g. schools, local governments) to receive the maximum summer program reimbursement (subsidy) rates without providing documentation of costs. The project operates in 13 States and 1 commonwealth: Alaska, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Nebraska, New Hampshire, North Dakota, Oklahoma, Puerto Rico, Texas, and Wyoming. It is authorized through June 30, 2004.

[Sec. 18(f) of the NSLA]

Senate draft: This section makes the “Lugar” pilot project permanent, continues it for those States already participating, and expands it in 2 ways:

– effective January 2005, it adds 6 States (Colorado, Louisiana, Michigan, Mississippi, Ohio, and Oregon) based on the proportion of children receiving summer meals compared to the national average; and

– effective January 2005, it extends coverage of the “Lugar” pilot project to *all* sponsors in all covered States (i.e., includes private nonprofit sponsors).

Section 116. Commodity Distribution Program

Current law: The Secretary is required to use “Section 32” and Commodity Credit Corporation funds to maintain the “annually programmed level of commodity assistance” for child nutrition and Older Americans Act programs (i.e., supplement appropriated funds in order to ensure that the covered programs receive the value of commodities they are “entitled” to receive). This requirement expires June 30, 2004.

[Sec. 14(a) of the NSLA]

Senate draft: This section makes the requirement for the Secretary to use “Section 32” and Commodity Credit Corporation funds to maintain the “annually programmed level of commodity assistance” *permanent*.

Section 117. Child and Adult Care Food Program

For-profit day care centers

Current law: For-profit day care centers may participate in the child and adult care food program if at least 25% of the children they serve meet the eligibility criteria for free or reduced-price school meals. In addition, they may participate if they receive compensation from amounts granted under Title XX of the Social Security Act (the social services block grant program) for at least 25% of the children enrolled or their licensed capacity, whichever is less. The first of these rules (25% of children served meeting the eligibility criteria for free or reduced-price school meals) expires June 30, 2004.

[Sec. 17(a)(2)(B) of the NSLA]

Note: Separately, section 17(p) of the NSLA permanently authorizes a 3-State “pilot” project under which for-profit child care centers can qualify under the first rule noted above (25% of children served meeting the eligibility criteria for free or reduced-price school meals) in Delaware, Iowa, and Kentucky.

Senate draft: This section makes permanent (and nationally applicable) for-profit child care centers’ ability to qualify if at least 25% of the children they serve are eligible for free or reduced-price school meals (i.e., the first rule noted above). **Note:** It also ends the 3-State “pilot” project expanding eligibility of for profit child care centers since the rule they operate under is made nationwide.

“Tier I” family day care homes: duration of determination

Current law: “Tier I” family day care homes are located in low-income areas or have low-income providers. They qualify for the higher of the 2 day care home reimbursement (subsidy) rates offered under the child and adult care food program. A determination that day care home is located in a low-income area (typically based on the proportion of children who are eligible for free or reduced-price school meals) generally is effective for 3 years – unless the State agency determines that the area no longer qualifies.

[Sec. 17(f)(3)(E)(iii) of the NSLA]

Senate draft: This section increases the length of “Tier I” determinations to 5 years – unless the State agency determines that the area no longer qualifies.

Disregarded overpayments

Current law: No provisions.

Senate draft: When conducting management evaluations, reviews, or audits, this section allows the Secretary or a State agency to disregard overpayments to participating institutions (typically, child care centers and sponsors of family day care homes) if the total overpayment for the fiscal year does not exceed an amount – consistent with the disregards allowed under other child nutrition programs – that recognizes the cost of collecting small claims. Disregards would not be allowed for overpayments for which there is evidence of a violation of law. ***Note:*** By regulation, the comparable disregard in school meal programs is \$600.

Family day care homes: duration of agreements

Current law: The Secretary is authorized to issue regulations directing States to develop and provide for the use of a standard agreement form between family day care homes and their sponsoring organizations. These agreements specify the rights and responsibilities of each party.

[Sec. 17(j) of the NSLA]

Senate draft: This section specifies that standard form agreements between day care homes and their sponsors are to remain in effect until terminated by either party.

Rural area eligibility pilot project for day care homes

Current law: No provisions. ***Note:*** Under section 17(f)(3)(A) of the NSLA, family or group day care homes qualify as “Tier I” day care homes (i.e., eligible for higher reimbursement/subsidy rates) if they are located in areas in which more than 50% of the children are eligible for free or reduced-price school meals.

Senate draft: This section requires the Secretary to carry out a pilot project in rural areas of 1 State (selected by the Secretary) under which the threshold for “Tier I” day care homes is 40% – for each of fiscal years 2006 and 2007.

This section also requires the Secretary to conduct an evaluation of the rural area eligibility day care home pilot project. A report is due not later than March 31, 2008, and mandatory funding (a total of \$400,000) is provided to carry out the evaluation, available until spent.

Management support initiative

Current law: The Secretary is required to provide training and technical assistance in order to assist State agencies in improving their management and oversight of the child and adult care food program. Mandatory funding for this initiative (\$1 million a year) expired at the end of FY2003.

[Sec. 17(q) of the NSLA]

Senate draft: This section provides mandatory funding for the management improvement initiative for fiscal years 2005 and 2006 – at \$1 million a year.

Age limits

Current law: Emergency homeless shelters may participate in the child and adult care food program. Subsidies are paid for free meals and snacks served to (1) children not more than 12 years old, (2) children of migrant workers who are not more than 15 years old, and (3) children with disabilities (no age limit).

[Sec. 17(t) of the NSLA]

Senate draft: This section allows subsidies to be paid for free meals and snacks served by emergency homeless shelters to (1) all children not more than *18 years old* and (2) children with disabilities (no age limit). ***Note:*** Section 107 permits “entities” participating in the runaway and homeless youth grant program under Title III of the Runaway and Homeless Youth Act to participate in the child and adult care food program under the same terms as emergency homeless shelters.

Paperwork reduction and technical amendments

Current law: No provisions.

Senate draft: This section also makes technical amendments to the section 17 of the NSLA and requires the Secretary (in conjunction with the States and participating child care food service institutions) to examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for day care homes, child care centers, and sponsors under the child and adult care food program.

Section 118. Fruit and Vegetable Pilot Project

Current law: A pilot project under which students in 25 elementary or secondary schools in each of 4 States (and elementary or secondary schools on 1 Indian reservation) have made available to them free fresh and dried fruits and fresh vegetables expires at the end of the 2003-2004 school year. The project operates in Indiana, Iowa, Ohio, Michigan, and the Zuni Pueblo and was funded with a total of \$6 million.

[Sec. 18(g) of the NSLA]

Senate draft: Beginning with the 2004-2005 school year, this section requires the Secretary to operate a pilot project under which free fresh fruits and vegetables are made available to the maximum extent practicable to students in:

- 25 elementary or secondary schools in each of the States and the Indian reservation in the existing project;
- 25 elementary or secondary schools in a separate existing project in Mississippi; and
- 25 elementary or secondary schools in each of 3 additional States and 2 Indian reservations (as selected by the Secretary).

In selecting schools to participate in the 3 additional States and 2 Indian reservations, the Secretary must, to the maximum extent practicable, ensure that the majority of schools are those in which at least 50% of students are eligible for free or reduced-price school meals.

This section also requires the Secretary to submit annual interim reports on the project, along with a final report (due by December 31, 2008).

This section further (1) provides that any remaining funding for the existing project may be used for the expanded project, (2) provides new mandatory funding for the project (\$9 million a year), and (3) authorizes appropriation of “such sums as are necessary” to expand the pilot project.

Section 119. Summer Food Service Rural Transportation Pilot Project

Current law: No provisions.

Senate draft: This section requires the Secretary to carry out a pilot project to provide grants to increase participation in the summer food service program through innovative approaches to limited transportation in rural areas. The grants would be provided through not more than 5 State agencies to not more than 60 eligible service institutions – selected by the Secretary. Eligible service institutions would be required to conduct a project for 3 successive fiscal years, and mandatory funding is provided (\$2 million for fiscal year 2006, and \$1 million a year for fiscal years 2007 and 2008, available until spent). Also required are an interim report and a final report (due by January 1, 2009).

Section 120. Summer Food Service Residential Camp Pilot Project

Current law: No provisions. **Note:** Residential summer camps may participate in the summer food service program, but must differentiate between children eligible for free and reduced-price meals and others in their meal service and collect income information. They may not operate as an “open-site” summer program (where all meals are served free to all children).

Senate draft: During the summers of 2004 and 2005, this section requires the Secretary to carry out a pilot project to identify and evaluate alternative methods of determining the eligibility of residential private nonprofit camps to participate in the summer food service program. The project would be carried out at 1 private nonprofit residential camp in each of 2 States. Eligible camps may not charge fees to any children in residence, must serve children from areas in which at least 50% of the children are eligible for free or reduced-price school meals, and would receive reimbursements (subsidies) for *all* meals served to participating children at the *free-meal* summer food service reimbursement/subsidy rate (effectively allowing them to operate as an “open-site” program). An evaluation report on the project would be due by March 31, 2006.

Section 121. Healthy School Nutrition Environment Pilot Projects

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section requires the Secretary to conduct pilot projects in selected elementary and secondary schools to create healthy school nutrition environments and to assess the effect of these environments on the health and well-being of the children enrolled in the schools.

The Secretary would be required to select schools in a manner that (1) provides for an equitable distribution among urban, suburban, and rural areas, and schools with varying family income levels, and (2) permits evaluation of the projects.

In the first year, selected schools would receive grants to assist them in assessing their nutritional environment and meeting “certification criteria.” For subsequent years, schools meeting “certification criteria” would receive grants to assist them in providing meal services and other approved activities consistent with a healthy school environment. “Certification criteria” would be established by the Secretary and include at least (1) providing meals that meet nutritional standards, (2) offering healthy food choices outside regular meal service, (3) promoting the consumption of fruits and vegetables, and (4) providing nutrition education to staff and to students in an understandable and uniform format and, to the extent practicable, in a language students can understand.

The Secretary would be required to evaluate and report on pilot schools – measuring, at a minimum, effects on (1) overweight children and obesity, (2) dietary intake, (3) nutrition education and behavior, (4) the adequacy of time to eat, (5) physical activities, (6) parental and student attitudes and participation, and (7) costs.

Appropriations are authorized at “such sums as are necessary,” to remain available until spent.

Section 122. Food Service Program Personnel Professional Standards Pilot Project

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section requires the Secretary to carry out a pilot project to (1) assess issues pertaining to professional certification of school food service program personnel and (2) provide States, school districts, and schools with assistance in improving professional standards, and obtaining appropriate program certification, related to food service and dietary management.

In carrying out the pilot project, the Secretary must (1) assist States in providing training and professional development classes and provide assistance to pay the costs of attending classes and obtaining certificates/credentials, (2) assess which certifications/credentials are appropriate, (3) assess the degree to which senior food service personnel are required to attain certificates/credentials, (4) assess the effect that employing certified/credentialed administrators has on program quality, and (5) assess the costs of including requirements for certifications/credentials.

A report on the pilot project is required on its completion and “such sums as are necessary” to carry out the pilot project are authorized, to remain available until spent.

Section 123. School Garden Grant Pilot Project

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section permits the Secretary to make grants to State or local educational agencies and nonprofit organizations to support “school garden programs” that allow children to learn about the importance of “specialty crops” to a healthy diet. The Secretary must develop and carry out the grant program in consultation with State departments of agriculture and other appropriate institutions.

This section also authorizes \$15 million for the project, to remain available until spent.

Section 124. Access to Local Foods

Current law: No provisions. **Note:** Section 9(j) of the NSLA requires the Secretary to encourage the purchase of locally produced foods (see section 111 above)

Senate draft: This section authorizes the Secretary to provide assistance, through competitive matching grants and technical assistance, to schools and nonprofit entities that:

- improve access to local foods in child nutrition food service schools and institutions through “farm-to-cafeteria” activities (including the acquisition of food and appropriate equipment and the training and education);
- are designed to procure local foods from small- and medium-sized farms;
- support nutrition education activities that incorporate the participation of schoolchildren in farm and agricultural education activities;
- develop a sustained commitment to “farm-to-cafeteria” projects in the community;
- require \$100,000 or less in Federal contributions and a Federal contribution of not more than 75%;
- provide cash or in-kind matching contributions;
- and cooperate in an evaluation carried out by the Secretary.

“Such sums as are necessary” are authorized to be appropriated to carry out this grant program – for fiscal years 2004 through 2008.

Section 125. Childhood Obesity Prevention Pilot Project

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section requires the Secretary to award a grant to carry out a pilot project to enhance obesity prevention activities for child care centers (and their sponsoring organizations) providing services to limited-English-proficient individuals through the child and adult care food program. The grant would be made to a national organization with expertise in designing and implementing health education programs limited-English-proficient individuals, would run for a period of 4 years, and would be carried out in 4 States that have experienced a growth in their limited-English-proficient population of at least 100% between 1990 and 2000.

Activities under the grant would include:

- developing a “tool kit” for use by lay educators;
- conducting training and providing technical assistance to lay health educators; and
- collaborating with child care centers and sponsoring organizations to identify limited-English-proficient children and families and to enhance their capacity to use appropriate obesity- prevention strategies;

An independent evaluation would be required, and appropriations of \$250,000 a year for fiscal years 2005 through 2008 are authorized.

Section 126. Year Round Services for Eligible Entities

Current law: No provisions.

Senate draft: This section permits local governments and private nonprofit organizations in California to receive subsidies for up to 3 meals and 2 snacks for any day on which they offer services. They would operate generally using summer food service program rules, including summer food service reimbursement (subsidy) rates. The Secretary is required to provide \$1 million in fiscal year 2005 to cover additional reimbursement (subsidy) costs, to remain available until spent.

Section 127. Free Lunch and Breakfast Expansion Pilot Project

Current law: No provisions. **Note:** Eligibility for free lunches and breakfasts generally is limited to children from families with income below 130% of the federal poverty income guidelines.

Senate draft: Subject to the availability of funds, this section requires the Secretary to carry out a pilot project under which the income eligibility limit for free lunches and breakfasts is raised to 185% of the federal poverty income guidelines (the limit for reduced-price school meals) – in all or part of 5 States selected by the Secretary (including a largely rural State with a significant Native American population).

This section also requires an evaluation of the project to assess (1) its effect on children in households with family income below 130% of the poverty guidelines and on children with family income between 130% and 185% of the guidelines, (2) its effect on certification and participation rates, (3) its effect on rates of lunch/breakfast-skipping, (4) its effect on academic achievement, (5) its effect on costs, and (6) other factors determined by the Secretary.

A report on the pilot project is required on its completion, and “such sums as are necessary” to carry out the project are authorized to be appropriated, to remain available until spent.

Section 128. Training, Technical Assistance, and Food Service Management Institute

Technology and information management systems

Current law: No provisions. **Note:** Section 21(a)(1) of the NSLA authorizes training and technical assistance activities to improve skills of individuals employed in child nutrition food service programs. Appropriations are authorized at \$1 million a year.

Senate draft: This section adds 2 new uses for the current training and technical assistance funding:

- providing assistance (on a competitive basis) for the purpose of aiding schools and school food authorities in meeting the cost of acquiring or upgrading technology and information management systems for use in child nutrition food service programs (particularly to schools/school food authorities with at least 50% of enrolled children certified eligible to receive free or reduced-price school meals); and
- providing assistance (on a competitive basis) to State agencies with low proportions of schools/ students participating in the school breakfast program that demonstrate the greatest need for aid in meeting costs associated with initiating or expanding a school breakfast program.

Food Service Management Institute

Current law: The Food Service Management Institute (FSMI) is required to (1) conduct research to assist schools and other child nutrition food service organizations in providing high quality, nutritious, and cost-effective meal service to children, (2) provide training and technical assistance relating to a number of food service matters, (3) establish a national network of professionals to present training programs and workshops for food service personnel, (4) develop training materials for the programs/ workshops, (5) act as a clearinghouse for research on the operation of food service programs, (6) train food service personnel, (7) prepare informational material, and (8) assist State educational agencies in providing additional nutrition and health instructions and instructors.

[Sec. 21(c) of the NSLA]

Senate draft: This section adds to the matters for which the FSMI is required to provide training and technical assistance – “hazard analysis and critical control point” plan implementation (see section 110), emergency readiness, responding to a food recall, and food bio-security training.

Funding

Current law: For training and technical assistance activities, \$1 million a year is authorized to be appropriated through fiscal year 2003. For the FSMI, mandatory funding of \$3 million a year is provided.

[Sec. 21(e) of the NSLA]

Senate draft: This section extends the \$1 million-a-year appropriations authorization for training and technical assistance activities through fiscal year 2008. It also increases mandatory funding for the FSMI to \$4 million a year, beginning with fiscal year 2005.

Section 129. Administrative Error Reduction

Administrative training and technical assistance materials

Current law: No provisions.

Senate draft: This section requires the Secretary – in collaboration with State educational agencies, school food authorities, and local educational agencies – to develop and distribute training and technical assistance materials related to the administration of school meal programs that are representative of the best management and administrative practices.

Federal administrative support

Current law: No provisions.

Senate draft: This section provides mandatory funding to the Secretary that the Secretary may use to (1) provide training and technical assistance and materials related to improving program integrity and administrative accuracy in school meal programs and (2) assist State educational agencies in reviewing the administrative practices of school food authorities. It provides \$5 million a year for fiscal years 2005 and 2006, and \$3 million a year for fiscal years 2007 and 2008.

Additional administrative review requirements

Current law: No provisions. ***Note:*** School food authorities are subject to periodic comprehensive reviews of their food service programs – covering all aspects (e.g., meal quality, administrative matters). Improperly paid funds may be recovered and returned to the Secretary.

Senate draft: In addition to any review carried out under current law, this section requires State educational agencies to conduct administrative reviews of school food authorities that have demonstrated a high level of, or a high risk for, administrative error (as determined by the Secretary). These additional reviews would review only the administrative processes of the selected school food authorities – including application, certification, verification, meal counting, and meal claiming procedures.

If, based on the administrative review, the State agency determines that a school food authority fails to meet performance criteria established by the Secretary, the State agency must require the school food authority to develop and carry out an approved corrective action plan, provide technical assistance in carrying out the plan, and conduct a followup review.

If an initial administrative review, a followup administrative review, or a review under current law reveals that a reimbursement claim was not properly payable, this section allows the Secretary to require the State educational agency to retain funds otherwise payable, under procedures determined by the Secretary. These retained funds may be returned to the Secretary or retained by the State agency. Specific rules are provided for calculating the overpayment amount to be retained, and the calculation generally increases the amount if repeated failures occur.

Funds returned to the Secretary may be credited to the child nutrition appropriation account or be used to (1) provide training and technical assistance related to administrative practices, (2) assist State agencies in reviewing the administrative practices of school food authorities, and (3) develop and distribute training and technical assistance materials. Funds retained by the State agency (not more than 25% of the total retained) may be used to carry out school meal program integrity initiatives (under an approved State plan) that assist school food authorities that have repeatedly failed to meet administrative performance criteria.

State plan requirements

Current law: No provisions.

Senate draft: This section stipulates that each State plan submitted for State administrative expense funding must include a description of how technology and information management systems will be used to improve program integrity by: (1) monitoring the nutrient content of meals, (2) training schools and school food authorities in how to use technology and information management systems, and (3) using electronic data to establish benchmarks to compare and monitor program integrity, participation, and financial data.

This section also stipulates that each State plan submitted for State administrative expense funding must include descriptions of the manner in which the State intends to administer (1) additional administrative review requirements (see above) and (2) state training requirements (see below).

State training requirements

Current law: No provisions.

Senate draft: This section requires each State to provide training in administrative practices to school food authority administrative personnel and other appropriate personnel and mandates that school food authorities and local educational agencies ensure that individuals conducting or overseeing administrative procedures receive training at least annually (unless the Secretary determines otherwise). It also requires the Secretary to provide training and technical assistance to States in support of State training initiatives or, at the Secretary's option, to directly provide training and technical assistance to school food authority administrative personnel and other appropriate personnel.

Funding

Current law: No provisions.

Senate draft: For each fiscal year beginning with fiscal year 2005, this section makes available to the Secretary \$4 million to assist States in carrying out training and additional administrative review requirements (see above) – except that the Secretary may retain a portion of this funding to cover costs of activities the Secretary carries out in lieu of States. Funding sent to the States must be allocated based on the number of local agencies that have demonstrated a high level of, or a high risk for, administrative error, and unused funding may be reallocated.

Section 130. Compliance and Accountability

Current law: Appropriations of \$3 million a year are authorized for compliance and accountability activities – through fiscal year 2003.

[Sec. 22(d) of the NSLA]

Senate draft: This section extends the appropriations authorization for compliance and accountability activities through fiscal year 2008 and raises it to \$6 million a year.

Section 131. Information Clearinghouse

Current law: The Secretary is required to enter into a contract with a nongovernmental organization for a clearinghouse that provides information to nongovernmental groups that assist low-income individuals and communities with food assistance, self-help activities, and other activities that empower low-income individuals or communities to improve their lives and reduce reliance on Federal, State, or local government agencies for food and other assistance. Appropriations of \$166,000 a year are authorized – through fiscal year 2003.

[Sec. 26(d) of the NSLA]

Senate draft: This section extends the appropriations authorization for an information clearinghouse through fiscal year 2008 and raises it to \$250,000 a year.

Section 132. Program Evaluation

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section permits the Secretary to conduct annual national performance assessments of child nutrition meal service programs that assess the cost of producing meals and snacks and the nutrient profile of meals and the status of menu planning activities. For this purpose, it authorizes appropriations of \$5 million a year.

Subject to the availability of funds, this section also requires the Secretary to conduct a study of the feasibility of improving the eligibility certification process for the school lunch program and allows the Secretary to conduct pilot projects to improve the certification process. For this purpose, it authorizes “such sums as are necessary.”

Section 133. Gleaning of Fresh Fruits and Vegetables

Current law: No provisions.

Senate draft: This section requires the Secretary to make a grant to a nonprofit nongovernmental organization to establish and maintain a field gleaning operation in 1 State in order to encourage the consumption of fresh fruits and vegetables. The organization must be experienced in providing fresh fruits and vegetables that would otherwise go to waste to needy individuals and in establishing and maintaining a “field gleaning network,” and must agree to provide information about field gleaning operations to related organizations.

This section also mandates funding for a field gleaning grant – \$100,000 a year for fiscal years 2005 through 2008 (up to 25% of which may be expended in the following fiscal year).

Title II. Amendments to the Child Nutrition Act of 1966

Section 201. Severe Need Assistance.

Current law: In order to receive higher “severe need” school breakfast program reimbursements (subsidies), schools must document their costs. They receive the lesser of their documented costs or the severe need subsidy rate.

In order to receive higher “severe need” school breakfast reimbursements (subsidies), schools must have served 40%+ of their lunches free or at a reduced price *in the 2nd preceding year*.

[Sec. 4(d) of the Child Nutrition Act (CNA)]

Senate draft: This section removes the requirement to document costs in order to receive severe need reimbursements (subsidies). Schools would receive the severe need subsidy rate, so long as they meet the “40%+” eligibility requirement noted above.

This section also allows eligibility for severe need subsidies to schools in which no lunches were served in the 2nd preceding year if the Secretary determines that the requirement that they have served 40%+ of their lunches free would have been met – i.e., allows new schools to meet the “40%+” requirement without a 2nd preceding year history.

Section 202. State Administrative Expenses

Minimum state grants

Current law: State administrative expense grants are calculated as 1.5% of total Federal spending on a list of child nutrition programs typically administered by State educational agencies – including school meal programs and the child and adult care food program. Separate provision is made for grants tied to spending on the summer food service program. Spending on after-school snack programs operated by schools and commodity assistance is not included in the dollar base that the 1.5% calculation is applied to.

Minimum State grants are set at \$100,000 a year.

[Sec. 7(a) of the CNA]

Senate draft: This section gradually increases the minimum State grant for administrative expenses to \$200,000 a year (indexed after fiscal year 2008) and requires that – for fiscal years 2005 through 2007 – no State will receive less than its fiscal year 2004 allocation.

Technology infrastructure improvement

Current law: No provisions.

Senate draft: This section requires States to submit, for the Secretary’s approval, an amendment to their plan as to how they will use their State administrative expense grant for information management systems that improve program integrity by – (1) monitoring the nutrient content of meals, (2) training schools and school food authorities in how to use technology and information management systems for menu planning, collecting “point-of-sale” data, processing applications for free and reduced-price meals, and verifying eligibility, and (3) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

Subject to the availability of funds, this section also requires the Secretary to provide funds to State educational agencies, on a competitive basis, to give grants to schools and school food authorities to defray the cost of purchasing/upgrading technology and information systems. Appropriations of “such sums as are necessary” are authorized for fiscal years 2005 through 2008, to remain available until spent.

Appropriations authorization

Current law: “Such sums as may be necessary” are authorized to be appropriated for State administrative expense grants – through fiscal year 2003.

[Sec. 7(g) of the CNA]

Senate draft: This section extends the appropriations authorization for State administrative expense grants through fiscal year 2008.

Section 203. World Food Prize

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section requires the Secretary to provide assistance for activities of the World Food Prize Foundation. Assistance could be used to acquire or improve headquarters property, support research and outreach for improving the quality, quantity, and availability of food throughout the world, and promote educational opportunities for students through the World Food Prize Youth Institute. Appropriations of “such sums as are necessary” are authorized.

Section 204. Special Supplemental Nutrition Program for Women, Infants, and Children (The WIC Program)

Definition of “nutrition education”

Current law: “Nutrition education” means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual’s personal, cultural, and socioeconomic preferences.

[Sec. 17(b)(7) of the CNA]

Senate draft: This section revises the definition of “nutrition education” to read: individual and group sessions and the provision of materials that are designed to improve health status and achieve positive change in dietary and *physical activity* habits, and that emphasize the relationship between nutrition, *physical activity*, and health, all in keeping with the *personal and cultural preferences* of the individual.

Definition of “supplemental foods”

Current law: “Supplemental foods” means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State agencies may substitute nutritionally equivalent foods to allow for cultural eating patterns.

[Sec. 17(b)(14) of the CNA]

Senate draft: This section revises the definition of “supplemental foods” to read: those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children *and foods that promote health as indicated in the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990*, as prescribed by the Secretary.

Certification period for breastfeeding women

Current law: Through regulations, breastfeeding women are certified at intervals of approximately 6 months, ending with the breastfed infant’s first birthday.

[Regulations under sec. 17(d)(3)(A) of the CNA]

Senate draft: This section allows State agencies to certify breastfeeding women *for up to 1 year postpartum, or until a woman stops breastfeeding, whichever is earlier.*

Physical presence requirement

Current law: Each individual seeking certification or recertification must be physically present to determine program eligibility, unless exempt under the terms of the Americans with Disabilities Act.

Local WIC agencies may waive the physical presence requirement if they determine it would present an unreasonable participation barrier. This waiver authority may be exercised only for infants and children who were present at their initial certification and (1) are receiving ongoing health care from a provider other than the local WIC agency or (2) were physically present within 1 year of a certification/recertification and have working parents.

[Sec. 17(d)(3)(C) of the CNA]

Senate draft: This section extends the physical presence waiver authority under current law to cover *infants under 8 weeks of age* (1) who cannot be present at certification for a reason determined appropriate by the local WIC agency and (2) for whom all necessary certification information is provided.

Use of WIC benefits at any authorized retail store

Current law: No provisions.

Senate draft: Through a State plan requirement, this section effectively requires State WIC agencies to allow WIC recipients to redeem WIC vouchers at any authorized retail store in the State.

Accelerated approval of WIC vendors

Current law: No provisions.

Senate draft: Through a State plan requirement, this section effectively requires that State WIC agencies have procedures for accepting and processing vendor applications outside of the established time-frames, if the State agency determines there will be inadequate access to the program – such as in the case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership.

Use of funds recovered from local WIC agencies

Current law: State WIC agencies may use funds recovered from vendors and participants as the result of a claim to carry out the WIC program in the fiscal year in which the claim arises, the fiscal year in which the funds are collected, and the fiscal year following the year in which the funds are collected.

[Sec. 17(f)(21) of the CNA]

Senate draft: In addition to current law provisions as to the use of funds recovered from vendors and participants, this section allows State WIC agencies to use funds recovered from *local WIC agencies* as the result of a claim under the same terms.

“Rounding up” infant formula benefits

Current law: Regulations set a limit on the number of ounces of infant formula that may be provided to a participant each month. **Note:** If can sizes provided by infant formula manufacturers do not add up to the regulatory limit, an extra can (going above the limit) may not be provided.

Senate draft: This section allows State WIC agencies to “round up” to the next whole can of infant formula to allow all infants to receive the “full-authorized” nutritional benefit specified by regulation.

This new authority applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004.

Notification of WIC vendor violations

Current law: No provision. **Note:** State WIC agencies approve and disqualify WIC vendors. Section 17(f)(24) of the CNA requires each State WIC agency to identify vendors that have a high probability of program abuse and conduct compliance investigations of the vendors.

Senate draft: If a State WIC agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty/sanction, this section requires the agency to notify the vendor of the initial violation in writing – unless the agency determines that notification would compromise an investigation.

Authorization of appropriations

Current law: “Such sums as may be necessary” are authorized to carry out the WIC program – through fiscal year 2003.

[Sec. 17(g) of the CNA]

Senate draft: This section extends the appropriations authorization for the WIC program through fiscal year 2008.

Nutrition services and administration allocations

Current law: The Secretary is required to allocate to each State WIC agency an amount for costs of nutrition services and administration (NSA) on the basis of a formula set by the Secretary. This requirement was effective through fiscal year 2003.

[Sec. 17(h)(2)(A) of the CNA]

Senate draft: This section makes the requirement that the Secretary allocate amounts for NSA costs permanent.

“Healthy People 2010” initiative

Current law: No provisions.

Senate draft: This section requires the Secretary “partner” with communities, State and local agencies, health care professionals, and the private sector to build a supportive breastfeeding environment for women participating in the WIC program – in order to support the breastfeeding goals of the “Healthy People 2010” initiative.

Size of State alliances

Current law: No provisions. **Note:** State WIC agencies have formed a number of “alliances” through which they join together to solicit bids from infant formula manufacturers.

Senate draft: This section defines “State alliance” as 2 or more State agencies that join together for the purpose of procuring infant formula by soliciting competitive bids.

This section also limits the size of State alliances. No State alliance may exist among States whose infant participation exceeds 100,000 as of October 1, 2003 (or a subsequent date determined by the Secretary for which data are available).

However –

- (1) alliances existing on the date of enactment may continue and expand to include more than 100,000 infants, so long as they do not expand to include any additional States;
- (2) any State alliance may expand to include any State agency that served fewer than 5,000 infants as of October 1, 2003 (or a subsequent date set by the Secretary) or any Indian Tribal Organization; and
- (3) the Secretary may waive the State alliance limits after submitting a report that describes the cost-containment and competitive benefits of the waiver to the Committee on Education and the Workforce and the Committee on Agriculture, Nutrition, and Forestry – and waiting at least 30 days.

Primary contract infant formula

Current law: No provisions.

Senate draft: This section requires State WIC agencies to use the “primary contract infant formula” as the first choice of issuance (by formula type) – with all other infant formulas issued as an alternative. It also defines “primary contract formula” to mean the specific infant formula for which manufacturers submit a bid.

This requirement applies to contracts resulting from bid solicitations issued on or after October 1, 2004.

Counting units for infant formula rebates (rebate invoices)

Current law: No provisions.

Senate draft: This section requires each State WIC agency to have a system to ensure that invoices for infant formula rebates from manufacturers (paid under competitive bidding/cost containment contracts) provide a reasonable estimate or an actual count of the number of infant formula units “sold” to WIC participants.

Uncoupling milk-based and soy-based infant formula bids

Current law: No provisions.

Senate draft: This section requires that large State WIC agencies/alliances solicit bids from infant formula manufacturers using procedures under which bids/discounts are solicited separately for milk-based and soy-based infant formulas. Large State agencies/alliances are those that served a monthly average of more than 100,000 infants during the 12-month period preceding the bid solicitation.

This requirement applies to bid solicitations issued on or after October 1, 2004.

Cent-for-cent adjustments to infant formula rebates

Current law: No provisions. **Note:** By regulation, infant formula WIC agency bid solicitations must require the manufacturer to adjust for price changes subsequent to the opening of the bidding process. This “inflation” provision may require a cent-for-cent *increase* in rebate amounts whenever there is any change in the lowest national wholesale price for a full truckload of the particular infant formula.

Senate draft: This section mandates that bid solicitations for infant formula require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires:

- a cent-for-cent increase in rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular formula; and
- *a cent-for-cent decrease in rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular formula.*

This mandate is effective for bid solicitations issued on or after October 1, 2004.

Lists of infant formula providers

Current law: No provisions.

Senate draft: This section requires State WIC agencies to maintain a list of food wholesalers, distributors, and retailers licensed in the State and infant formula manufacturers registered with the Food and Drug Administration. It also requires WIC vendors to purchase infant formula from the State agency list.

Earmarked funding

Current law: Through fiscal year 2003, the Secretary is required to use \$10 million a year or the amount of WIC funding for the prior fiscal year that has not been obligated, whichever is less for:

- development of program infrastructure, including management information systems;
- special State projects of regional or national significance to improve program services; and
- special breastfeeding support and promotion projects (including projects to assess the effectiveness of particular breastfeeding promotion strategies and projects to develop State or local agency capability or facilities to provide quality breastfeeding services)

[Sec. 17(h)(10) of the CNA]

Senate draft: For fiscal years 2005 through 2008, this section requires the Secretary to use \$64 million or the amount of WIC funding for the prior year that has not been obligated, whichever is less for:

- program infrastructure, special projects to promote breastfeeding (including projects to assess the effectiveness of particular breastfeeding promotion strategies), and special State projects of regional or national significance to improve program services (\$14 million);
- establishing, improving, or administering management information systems, including changes necessary to meet new legislative or regulatory requirements (\$30 million); and
- special nutrition education, such as breastfeeding peer counselors or other related activities (\$20 million).

If less than \$64 million is available, the Secretary must distribute the funding proportional to the above-noted distribution.

Vendor cost containment

Current law: In selecting vendors for participation, State WIC agencies are required to take into consideration the prices charged by the vendor for WIC food items as compared to the prices charged by other vendors. State agencies also must establish procedures to ensure that selected vendors do not raise prices to levels that would otherwise make them ineligible to participate. ***Note:*** By regulation, State agencies must approve an appropriate number and distribution of vendors to ensure adequate participant access and may establish criteria to limit the number of vendors they approve. They may evaluate applicant vendors based on their shelf prices or on prices they bid (which may not exceed shelf prices) and must establish price limitations (allowable reimbursement levels) on the amount that they will pay vendors. They also may establish different “competitive price requirements and price limitations for different vendor peer groups” (which may include a factor to reflect fluctuations in wholesale prices) and may except pharmacy vendors that supply only infant formula or “medical foods.”

[Sec. 17(h)(11) of the CNA]

Senate draft: This section strikes existing law and replaces it with the following vendor cost containment rules.

State WIC agencies must establish a “vendor peer group system,” as well as competitive price criteria and allowable reimbursement levels for each “vendor peer group.” State agencies may exempt certain vendors – pharmacy vendors that supply only infant formula or “medical foods” and certain nonprofit vendors.

Competitive price criteria for the selection of vendors for participation in the WIC program must (1) ensure that the retail prices they charge are competitive with prices charged by other vendors, (2) take into account vendors’ shelf prices or the prices they bid (which may not exceed shelf prices), and not result in inadequate access to benefits for program participants. State WIC agencies must establish procedures to ensure that selected vendors do not raise prices to levels that would otherwise make them ineligible to participate.

Allowable reimbursement levels must ensure that (1) payments to vendors in a peer group reflect competitive retail prices and (2) the State agency does not reimburse a vendor for supplemental foods at a level that would otherwise make the vendor ineligible. Allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices, and the State agency must ensure that allowable reimbursement levels do not result in inadequate access to benefits for program participants.

State WIC agencies must demonstrate to the Secretary (and the Secretary must certify) that the competitive price criteria and allowable reimbursement levels they establish for vendors that derive more than 50% of their annual revenue from the sale of food items obtained with WIC vouchers (food instruments) do not result in higher food costs than if program participants redeemed their vouchers at other vendors. New applicant vendors would be judged to meet the 50% threshold under criteria set by the Secretary.

State WIC agencies must comply with the above-noted cost-containment rules not later than 18 months after enactment.

Imposition of EBT costs on retailers

Current law: No provisions.

Senate draft: This section bars the Secretary from imposing, or allowing a State WIC agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfer (EBT) systems on any retailer as a condition of participation in the WIC program.

Universal Product Code (UPC) data base

Current law: No provisions.

Senate draft: This section requires the Secretary to (1) establish a national UPC database for use in carrying out the WIC program and (2) make available funds for support of the database.

Incentive items

Current law: No provisions.

Senate draft: This section bars State WIC agencies from approving or making payments to vendors that derive more than 50% of their annual revenue from the sale of food items obtained with WIC vouchers (food instruments) and provide “incentive items” or other free merchandise to program participants unless the vendor provides proof that the items/merchandise were obtained at no cost.

“Spend-forward” authority

Current law: State WIC agencies are authorized to “spend forward” up to 1% of their nutrition services and administration (NSA) funds in the following fiscal year. In addition, they may “spend forward” up to 1/2% of their NSA funds for the development of management information systems (including electronic benefit transfer systems) – with the prior approval of the Secretary.

[Sec. 17(i)(3)(A)(ii) of the CNA]

Senate draft: This section raises the current 1% limit on spending forward NSA funds to 3%.

Migrant and community health center initiative

Current law: The Secretary and the Secretary of Health and Human Services are required to establish and carry out an initiative to provide supplemental foods and nutrition education through an increased number of migrant and community health centers. Several notifications to Congress on the progress of this initiative were required.

[Sec. 17(j) of the CNA]

Senate draft: This section deletes out-of-date references to notifications to Congress.

WIC farmers’ market nutrition program

Current law: By regulation, roadside stands may participate in the WIC farmers’ market nutrition program if approved through the Food and Nutrition Service. By law, States must provide (from State, local, or private funds) 30% of the *total cost* of the program in the State, and the value of the Federal share of benefits received by any recipient may not be more than \$20 per year. Appropriations for the farmers’ market nutrition program are authorized at “such sums as may be necessary” through fiscal year 2003.

[Sec. 17(m) of the CNA]

Senate draft: This section (1) makes roadside stands eligible to participate in the WIC farmers’ market nutrition program at State option, (2) requires that States provide 30% of the *administrative cost* of the program in the State, and (3) increases the limit on the Federal share of benefits to \$30 per year. It also extends the authorization of appropriations for the program through fiscal year 2008.

Demonstration project to enroll children in health programs

Current law: The Secretary was required to establish a 1-State demonstration project to use the WIC program identify and enroll children in Medicaid and State Children's Health Insurance programs. The authority for this demonstration project terminated September 30, 2003.

[Sec. 17(r) of the CNA and Sec. 12(p) of the NSLA]

Senate draft: This section deletes expired authority for a demonstration project to enroll children in health programs.

Demonstration project for offering fruits and vegetables to WIC participants

Current law: No provisions.

Senate draft: Subject to the availability of funds, this section requires the Secretary to award grants for demonstration projects to evaluate the feasibility and acceptance of offering fresh, frozen, or canned fruits and vegetables to WIC participants. Grants would be awarded to no more than 5 State WIC agencies and involve no more than 5 local agencies. Fruits and vegetables under this project would be in addition to foods offered to WIC participants through the regular WIC program.

A report on this project would be required, and "such sums as are necessary" are authorized to be appropriated for the project. Authority for the project would terminate September 30, 2005.

Section 205. Team Nutrition Network

Current law: Authority to operate a Nutrition Education and Training (NET) program is provided in Section 19 of the CNA. Appropriations have not been provided for this program since FY1998. "Full funding" for the NET program would now equal about \$24 million a year (50 cents per enrolled child). However, funding typically did not exceed \$10 million.

Under the NET program, the Secretary is authorized to formulate a nutrition education and training program through grants to State educational agencies that provide: nutritional training of educational and food service personnel; training school food service personnel in the principles and practices of food service management; nutrition education activities in schools other institutions serving children; and nutrition education to parents and caregivers.

NET funds may be used to (1) employ nutrition education specialists to coordinate the State's program, (2) undertake assessments of nutrition education needs, (3) develop a State nutrition education plan, (4) pilot projects, (5) planning, developing, and conducting programs and workshops for food service and educational personnel, (6) coordinating and promoting nutrition education and training activities in local school districts, (7) contracting with public and private nonprofit educational institutions for the conduct of nutrition education instruction, (8) preparing and testing nutrition education materials, and (9) carrying out other appropriate activities as determined by the State. Each State must have a nutrition education specialist as State coordinator.

[Sec. 19 of the CNA]

Senate draft: This section replaces current-law provisions for a NET program with new provisions for a *Team Nutrition Network* ("a multidisciplinary program to promote healthy eating to children based on scientifically valid information and sound educational, social, and marketing principles").

Subject to the availability of funds (and in addition to any funds normally made available for "team nutrition" purposes by appropriations laws), the Secretary is authorized to make grants to State agencies to establish team nutrition networks to promote nutrition education through the use of messages and materials developed by the Secretary and the promotion of active lifestyles.

For each fiscal year, the total amount made available may not be more than $\frac{1}{2}$ cent x the number of lunches reimbursed (subsidized) through the school lunch program, the child and adult care food program, and the summer food service program. At current lunch service rates, this would total to approximately \$34 million. This could be supplemented with funds received by the Secretary from nongovernmental sources.

To be eligible to receive team nutrition grants, which may be competitive grants, State agencies must submit plans that include (1) a description of the goals and primary messages of their proposed team nutrition network, (2) an analysis of the means by which the State agency will use and disseminate messages and materials developed by the Secretary, (3) an explanation of the ways the State agency will use grant funds to promote healthy eating and physical activity and fitness in schools, (4) a description of the ways in which messages and materials developed by the Secretary will be used to coordinate nutrition and physical activities at the State level with other health promotion and education activities, (5) an annual summary of team nutrition network activities, (6) a description of the ways in which the total school environment will support healthy eating and physical activity, and (7) a description of how all communications to parents and guardians will be in an understandable and uniform format and, to the extent practicable, in a language that parent and guardians understand.

Each State receiving a grant must appoint a team nutrition network coordinator.

Activities authorized under team nutrition network grants would include: (1) collecting, analyzing, and disseminating data regarding the extent to which children/youth are overweight, physically inactive, or suffering from nutrition-related deficiencies or diseases, (2) indentifying programs and services to meet needs identified in the data, (3) implementing model school curricula using team nutrition network messages and materials, (4) implementing pilot projects in schools to promote physical activity and enhance students' nutritional status, (5) improving access to local foods, (6) implementing State health guidelines and emphasizing regular physical activity during school hours, (6) establishing healthy eating and lifestyle policies in schools, (7) and providing training and technical assistance to teachers and school food service professionals.

Appropriations for the Team Nutrition Network program are authorized at "such sums as are necessary."

Section 206. Review of Best Practices in the Breakfast Program

Current law: No provisions.

Senate draft: Subject to the availability of funds, authorizes the Secretary to enter into an agreement with a research organization to collect and disseminate a review of "best practices" so as to assist schools in addressing impediments that hinder the growth of the school breakfast program. The review would describe model breakfast programs and offer recommendations for schools to overcome obstacles such as the length of the school day, bus schedules, and increased costs. The results of the review would be disseminated not later than 1 year after enactment.

Title III. Commodity Distribution Programs

Section 301. Commodity Distribution Programs.

Current law: The Secretary is permitted to use "Section 32" funds to remove and dispose of unsafe foods donated to child nutrition programs by the Agriculture Department. This authority expired September 30, 2003.

Senate draft: This section makes permanent the Secretary's authority to use "Section 32" funds to remove and dispose of unsafe foods donated to child nutrition programs by the Agriculture Department.

Title IV. Implementation

Section 401. Guidance and Regulations

This section requires the Secretary to issue guidance to implement certain amendments made by this Act as soon as practicable after enactment. It also requires the Secretary to promulgate final regulations for these amendments not later than 2 years after enactment.

The amendments affected by these directives are:

- Section 102 (nutrition requirements)
- Section 104 (direct certification);
- Section 105 (household applications);
- Section 106 (duration of eligibility for free and reduced price meals);
- Section 107 (runaway, homeless, and migrant youth);
- Section 110 (school food safety programs);
- Section 115 (summer food service program for children);
- Section 117(c) (child and adult care food program, disregarded overpayments);
- Section 118 (fruit and vegetable pilot program);
- Section 129(b) and (c) (additional administrative review requirements, State plan requirements, State training requirements, funding);
- Section 204(a)(3) (WIC definition changes);
- Section 204(b) (WIC certification period for breastfeeding women, physical presence requirement);
- Section 204(c)(4) (notification of WIC vendor violations);
- Section 204(e)(3) (size of WIC State alliances);
- Section 204(e)(5) (counting units for infant formula rebates in the WIC program);
- Section 204(e)(6) (uncoupling milk-based and soy-based infant formula bids in the WIC program);
- Section 204(e)(7) (cent-for-cent adjustments to infant formula rebates in the WIC program);
- Section 204(e)(10) (vendor cost containment in the WIC program); and
- Section 204(h)(1) (WIC farmers' market nutrition program, roadside stands).

Section 402. Effective Dates

This section makes most provisions effective on the date of enactment. Special effective dates are:

July 1, 2004 for:

- Section 106 (duration of eligibility for free and reduced price meals);
- Section 107 (runaway, homeless, and migrant youth);
- Section 129(c) (State plan requirements, State training requirements, funding); and
- Section 201 (severe need assistance).

October 1, 2004 for:

- Section 117(c) (child and adult care food program, disregarded overpayments);
- Section 117(g) (child and adult care food program, age limits);
- Section 202(a) (State administrative expenses, minimum State grants);
- Section 204(a) (WIC definition changes);
- Section 204(b) (WIC certification of breastfeeding women, physical presence requirement);
- Section 204(c)(1) (accelerated approval of WIC vendors);
- Section 204(c)(4) (notification of WIC vendor violations);
- Section 204(e)(4) (primary contract infant formula in the WIC program);
- Section 204(e)(5) (counting units for infant formula rebates in the WIC program);
- Section 204(e)(6) (uncoupling milk and soy infant formula bids in the WIC program);
- Section 204(e)(7) (cent-for-cent adjustments to infant formula rebates in the WIC program);
- Section 204(e)(8) (lists of infant formula providers in the WIC program);
- Section 204(e)(10) (WIC vendor cost containment);
- Section 204(e)(13) (incentive items in the WIC program);
- Section 204(f) (spend-forward authority in the WIC program); and
- Section 204 (h)(1) and (2) (WIC farmers' market nutrition program, roadside stands and matching requirement).

January 1, 2005 for:

- Section 115(c)(1) and (c)(3) (the "Lugar" summer food service pilot project).

July 1, 2005 for:

- Section 104 (direct certification);
- Section 105 (household applications);
- Section 110 (school food safety programs); and
- Section 129(b) (additional administrative review requirements).